

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**ERIC DANTE PITT, for himself
And on behalf of all similarly situated
individuals,**

Plaintiff,

Civil Action No. 3:11-cv-697

v.

**KMART CORPORATION,
A wholly owned subsidiary of Sears
Holdings Corporation,**

and

SEARS HOLDINGS CORPORATION,

Defendants.

**DEFENDANTS' MOTION TO DISMISS
COUNTS I AND II OF THE AMENDED CLASS COMPLAINT**

Defendants Kmart Corporation and Sears Holdings Corporation submit this Motion to Dismiss Counts I and II of Plaintiff Eric Dante Pitt's ("Plaintiff") Amended Class Complaint pursuant to Rules 12(b)(6) and 12(b)(1) of the Federal Rules of Civil Procedure. For the reasons stated in the accompanying Memorandum in Support, Kmart Corporation and Sears Holdings Corporation respectfully request that the Court grant their motion and dismiss Counts I and II of Plaintiff's Amended Class Complaint.

Dated: April 6, 2012

Respectfully Submitted

**KMART CORPORATION &
SEARS HOLDINGS CORPORATION**

By: /s/ John C. Lynch
Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will then send a notification of such filing (NEF) to the following:

Counsel for Plaintiff

Christopher Colt North
The Consumer and Employee Rights Law Firm
751-A Thimble Shoals Blvd.
Newport News, VA 23606
cnorthlaw@aol.com

Leonard A. Bennett
Consumer Litigation Associates
763 J Clyde Morris Boulevard, Suite 1A
Newport News, Virginia 23601
Email: lenbennett@cox.net

/s/ John C. Lynch

John C. Lynch
Virginia State Bar No. 39267
Attorney for Defendants
TROUTMAN SANDERS LLP
222 Central Park Ave., Suite 2000
Virginia Beach, Virginia 23462
Telephone No.: (757) 687-7765
Facsimile No.: (757) 687-7515
Email: john.lynch@troutmansanders.com